KASIKAYI MUNATSI

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA AND MATHONSI JJ
BULAWAYO 27 JUNE 2011

G Nyathi for appellant
W Mabhaudi for respondent

Criminal Appeal

KAMOCHA J: This is an appeal against a sentence imposed by the regional court sitting in Bulawayo on 20 January 2011. The appellant pleaded not guilty to theft of a motor vehicle as defined in section 113(1)(b) of the Criminal Law (Codification and Reform) Act [Chapter 9:23].

The allegations were that during the early hours of New Year's day he stole a Mazda SXD 2500 belonging to one Tatenda Mbengegwi which was parked outside Vision Night Club. He was found guilty at the end of the trial despite his protestations.

The trial court then sentenced him to undergo 6 years imprisonment of which 2 years imprisonment was suspended for 5 years on the customary conditions of future good behavior.

In his grounds of appeal he complained that the learned magistrate had not properly balanced his mitigating and aggravating factors in her reasons for sentence. His other complaint was that the sentence imposed did not fit the circumstances of the case.

The brief circumstances giving rise to this case were that on 1 January 2011 at about 12 midnight the complainant parked his car outside Vision Night Club situated at the corner of 13th Avenue and Robert Mugabe Way, Bulawayo. He closed all the windows and locked all the doors and entered the night club.

While he was inside the appellant used some unknown object to open the locked car. He drove the car, but run out of luck before going far, and collided into a parked car and then failed to drive away before being discovered by the complainant's young brother who found him sitting in the car. The car had been parked just before 12 midnight. The appellant was found in the car at about 3 am having driven the car from where it had been parked before he collided into a parked car.

When approached by the complainant's young brother and other people the appellant bolted out of the car and fled but was apprehended before he went too far. He was found with a bunch of keys on his person.

The complainant's young brother said the gear box of the vehicle had been damaged during the collision with a parked car. The appellant could not drive the car any further because of the gearbox which was stuck following the collision.

The appellant must have either used some keys from his bunch of keys to open and start the vehicle or some other object which he was not prepared to tell the court. The vehicle was valued at $5 000 and was recovered.

The trial court found the appellant to have been untruthful. It rejected his story that he only wanted to steal the battery of the car. Had that been his sole intention there would have been no need to drive the car from where it had been parked.

The accused was aged 19 years at the time he committed the offence. It is usually that age group that commits that type of crime which is regrettably prevalent and appears to be on sharp increase.

Mr *Nyathi* who argued the appeal on behalf of the appellant was unable to show any misdirection by the trial court. There being no misdirection by the trial court this court cannot interfere with judicial discretion properly exercised on the basis that it would, maybe, have imposed a somewhat different sentence had it been the trial court.

Consequently, after hearing arguments from the respective legal practitioners we concluded that the appeal was devoid of any merit and dismissed it and indicated that our reasons would follow. The above are they.

Mathonsi J …… I agree

Sansole & Senda, appellant's legal practitioners
Criminal Division of the Attorney General's Office, respondent's legal practitioners